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Before the **DEC - 9 1998**  
Federal Communications Commission  
Washington, DC 20554

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In the Matter of )  
Comments )  
MM Docket No. 95-31 )  
Reexamination of the Comparative )  
Standards for Non-commercial Educational Applicants )

Submitted by:

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#### 1.0 Introduction

Americans for Radio Diversity (ARD) is a nonprofit organization, composed of concerned radio listeners and consumers, dedicated to promoting community orientated public and commercial broadcasting. In this interest we are filing comments on this proceeding concerning the issuing of Non-commercial Educational (NCE) broadcast licenses.

#### 2.0 Point and Lottery Systems

ARD is in favor of issuing NCE licenses based on a comparative point system. We feel that it is in the public's best interest that the best-qualified applicant be selected. Leaving the awarding of licenses to chance would not properly address this situation. It is also felt that a lottery system would cause an increase in mutually exclusive applications. The commission states in paragraph II sec. 10 of MM 95-31 that a lottery system, due to it's speed of implementation, would reduce the backlog of mutually exclusive applicants. This sounds good in theory but we believe that the possibility of getting a station based on chance instead of merit would only increase the number of applicants and thus maintain or even increase the current backlog.

It should be noted that in our Petition for Rulemaking regarding micro-broadcasting we advocated issuing licenses on a "first-come, first-serve" basis. This was done because we felt that the requirements that we instated to be eligible for a license were sufficient to guarantee a highly qualified applicant that planned to serve in the public interest. We do not believe that the current eligibility requirements for NCE stations are adequate to insure this. The use of a point system

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using criteria similar to our micro-broadcasting eligibility requirements would offset this weakness and insure that qualified broadcasters, acting in the public's interest, would be awarded licenses. In section 3.0 below we outline our suggested criteria for a point system.

### 3.0 Proposed Point System

Before being entered into the pool of applicants, applicants must show minimum financial ability to construct and operate a station and technical standards including access to a professional engineer, etc.

Once these standards are met, ARD proposes that significant weight be given to four factors:

- (1) Owners that reside in the community in which they intend to serve. We suggest a license holder, or the majority of the governing board, live within twenty-five miles of the transmitter. In rural areas, where the pool of potential broadcasters may be smaller, the residential requirement may be expanded up to fifty miles.
- (2) Stations whose broadcast content originates in the community to be served.
- (3) Programming content that serves a community group (ethnic, social class, etc...) not currently being served.
- (4) Station owners/groups that currently do not hold other broadcast licenses or have interest in other media concerns.

ARD proposes that points of a lesser weight be awarded for the following factors:

- (1) Commitment to a longer broadcast day.
- (2) Stations who intend to use a significant number of community volunteers to operate the station.

ARD feels that the following factors should not be considered in a point system:

- (1) Higher power stations or larger coverage areas: As comments in the low-power FM proceedings (see RM9208 and RM9242) demonstrated, sometimes it is the smaller community-focused station that better serves the public. Furthermore, higher power stations require increased investment therefore favoring applicants with greater wealth.
- (2) Previous broadcast experience: If the application is complete and accurate there is no reason to believe that someone without previous broadcast experience would not better serve the target community. Awarding points for this would only favor those entrenched in the current system.

ARD also suggests the following requirements: In the event of a tie in the point system, competing

applicants would be allowed to negotiate the use of the spectrum, perhaps resulting in a time-share arrangement. It has been shown that time-share arrangements can increase diversity and are not as confusing to the listener as some would claim (reference the time-share arrangement of KOOP-FM and KVRX-FM in Austin, Texas).

To insure that the preferences embedded in a point system are not undermined, ARD recognizes that restrictions on the transfer of licenses must be put in place. ARD proposes that the licenses be non-transferable and that if the license holder wishes to cease broadcasting the spectrum would be returned and reopened for application. This would eliminate the current status where prices for broadcast properties become artificially inflated. It would also promote the notion that the airwaves are indeed public and not something that one can purchase.

If the FCC finds the above described "forfeit system" unacceptable, ARD would support a holding period with restrictions. We propose a five year holding period. If broadcasting stops before the five year period the frequency would be forfeited and opened for application. If the five year period has passed the license holder would be allowed to transfer the license to a individual / group willing to uphold the characteristics which gave the original license owner the selection advantage. We also propose that the party releasing the license only be allowed to recoup their original start-up investment in the station.

#### 4.0 Conclusion

The 1934 Telecom Act requires broadcasters to serve "the public interest, convenience and necessity" as a prerequisite to being given trusteeship of the public airwaves. It is the conclusion of ARD that a point system similar to the one outlined above be implemented to guarantee the American public will be better served by it's broadcast services.

Duly Submitted:



Americans for Radio Diversity  
Anita Hennessy, Representative